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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION TWO

THE PEOPLE,

Plaintiff and Respondent,

v.

EDUARDO NAVA MORA,

Defendant and Appellant.

E063905

(Super.Ct.No. INF1100811)

OPINION

APPEAL from the Superior Court of Riverside County. Becky L. Dugan, Judge.

Affirmed.

Melanie K. Dorian, under appointment by the Court of Appeal, for Defendant and Appellant.

No appearance for Plaintiff and Respondent.

Defendant Eduardo Mora appeals from the superior court’s ruling denying his petition to reduce his 2011 grand theft auto (Pen. Code, § 487, subd. (d)(1)) conviction to a misdemeanor under Proposition 47.¹ We affirm.

FACTS AND PROCEDURE

On April 6, 2011, defendant stole a 1999 Nissan Altima.

On April 29, 2011, the People filed a complaint charging defendant with grand theft auto (§ 487, subd. (d)(1)); unlawfully taking a vehicle (Veh. Code, § 10851, subd. (a)); and receiving a stolen vehicle (§ 496d, subd. (a)).

On May 10, 2011, defendant pled guilty to grand theft auto, the other counts were dismissed, and defendant was placed on probation.

On February 8, 2012, defendant admitted to violating his probation and the trial court imposed a 16-month prison term.

On November 4, 2014, voters enacted Proposition 47, and it went into effect the next day. (Cal. Const., art. II, § 10, subd. (a).) “Proposition 47 makes certain drug- and theft-related offenses misdemeanors, unless the offenses were committed by certain ineligible defendants. These offenses had previously been designated as either felonies or wobblers (crimes that can be punished as either felonies or misdemeanors).” (*People v. Rivera* (2015) 233 Cal.App.4th 1085, 1091.) “Proposition 47 also created a new resentencing provision: section 1170.18. Under section 1170.18, a person ‘currently serving’ a felony sentence for an offense that is now a misdemeanor under Proposition

¹ All section references are to the Penal Code unless otherwise indicated.

47, may petition for a recall of that sentence and request resentencing in accordance with the statutes that were added or amended by Proposition 47.” (*Id.* at p. 1092; see § 1170.18, subd. (a).)

On February 25, 2015, defendant petitioned for resentencing under Proposition 47, contending the value of the 1999 Nissan Altima did not exceed \$950. The People filed a response arguing grand theft auto is “Not a qualifying felony.” On May 8, 2015, the superior court denied the petition on the ground that section “487(d)(1) is not a qualifying felony.”

This appeal followed.

DISCUSSION

After defendant appealed, and upon his request, this court appointed counsel to represent him. Counsel has filed a brief under the authority of *People v. Wende* (1979) 25 Cal.3d 436 and *Anders v. California* (1967) 386 U.S. 738 setting forth a statement of the case, a summary of the facts, and a potential arguable issue, and requesting this court to undertake a review of the entire record.

We offered defendant an opportunity to file a personal supplemental brief, but he has not done so. In appellate counsel’s brief before this court, counsel argues as a potential issue whether the trial court erred in denying defendant’s petition for resentencing under Proposition 47. However, aside from whether a conviction of section 487, subdivision (d)(1), would otherwise qualify for reduction to a misdemeanor, defendant has not established that the value of the vehicle he was convicted of stealing did not exceed \$950. A defendant seeking resentencing under section 1170.18 bears the

burden of demonstrating that his underlying offense fell within that statutory scheme.

(*People v. Sherow* (2015) 239 Cal.App.4th 875, 879.)

Pursuant to the mandate of *People v. Kelly* (2006) 40 Cal.4th 106, we have independently reviewed the record for potential error and find no error.

DISPOSITION

We affirm the order denying defendant's petition for resentencing on his conviction for grand theft auto without prejudice to consideration of a subsequent petition that supplies evidence of his eligibility.

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RAMIREZ

P. J.

We concur:

McKINSTER

J.

CODRINGTON

J.